

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 91190-001

v

Blue Cross Blue Shield of Michigan
Respondent

/

Issued and entered
this 30th day of September 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On July 25, 2008, XXXXX, authorized representative of her late brother XXXXX (Petitioner), filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on August 1, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on August 11, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM Individual Care Blue certificate (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner was diagnosed with cancer in March of 2006. He had been using the Pleurx Catheter since October 19, 2006. The certificate under which he received health benefits as of April 2007 does not cover durable medical equipment (DME). Therefore, the Petitioner was paying out of pocket for his catheter and supplies from April 2007 to December 3, 2007. From December 4, 2007 through January 24, 2008, the Petitioner was enrolled with BCBSM's Integrated Case and Disease Management Program which covers certain non-contractual services. BCBSM covered the Pleurx Catheter Drainage Kits from December 4, 2007 until January 24, 2008.

The Petitioner's sister requested that BCBSM also cover the Pleurx Drainage Kits from April 10, 2007 to November 17, 2007 in the total amount of \$12,800.00. She also wants BCBSM to provide coverage for the portable gaseous oxygen rental from October 25, 2007 until January 25, 2008 in the amount of \$258.61 and the oxygen concentrator rental from October 25, 2007 until January 25, 2008 in the total amount of \$1,168.56. She also request that BCBSM pay finance charges of \$141.48. The total amount requested was \$14,363.65. BCBSM denied coverage for the services that the Petitioner's sister requested.

The Petitioner's sister appealed BCBSM's denial. BCBSM held a managerial-level conference on June 12, 2008, and issued a final adverse determination dated July 10, 2008.

III ISSUE

Did BCBSM correctly deny coverage for the Petitioner's DME items?

IV ANALYSIS

Petitioner's Argument

In 2006, the Petitioner was diagnosed with stage IV non small cell metastatic cancer. His BCBSM group coverage at the time covered his Pleurx Catheter Kits. In April 2007, the Petitioner changed his coverage to BCBSM Individual Blue. The Petitioner did not realize that this plan did

not cover DME. He received a bill for the catheter kits in April 2007. His sister called BCBSM and informed them that these kits were a medical necessity. She says she never received any response from BCBSM.

In November 2007, the Petitioner agreed to participate in the BCBSM case management program. The nurses in this program assured the Petitioner that the catheter kits could be covered retroactively to April 2007. It was not until March 10, 2008 that BCBSM sent to the Petitioner the case management contract that agreed to pay for his catheter kit from December 14, 2007 until January 24, 2008. The Petitioner died on March 11, 2008.

The Petitioner's sister argues that all of her brother's DME services provided while he had Individual Care Blue coverage including the catheter kits and his oxygen rental items should be covered by BCBSM under the case management program. All of this care was medically necessary.

BCBSM's Argument

The Petitioner's Individual Care Blue certificate does not cover DME. The Petitioner was placed under ICDMP to cover non-contractual services like DME. The certificate indicates that "we will pay non-contractual services only when such services are specifically described in a signed treatment plan." The certificate states that "services described in the treatment plan will be provided only so long as the plan is in effect." Because of these provisions, BCBSM only paid the Pleurx Drainage Kits from December 4, 2007 to January 24, 2007, which is the duration of the Integrated Case and Disease Management Program. Therefore, the kits used prior to December 4, 2007 are not a covered benefit.

BCBSM also indicates that the oxygen services were not part of the treatment plan and are therefore not a covered benefit.

Commissioner's Review

It is correct that the certificate does not provide coverage for DME. The Petitioner's Pleurx

catheter kits and his portable oxygen equipment are DME and are, therefore, not contract benefits.

However, the contract does provide that the Petitioner may receive additional benefits through the

Integrated Case and Disease Management Program. Page 5.13 of the certificate provides:

Integrated case and disease management is a component of the BlueHealthConnection Program. It is a voluntary program designed to help manage the health care of members with acute or chronic medical conditions, regardless of the setting. Under integrated case and disease management, we will pay for non-contractual services only when such services are specifically described in a signed treatment plan.

- Services described in the treatment plan will be provided only as long as the plan is in effect.
- Coverage for noncontractual services under integrated case and disease management will only be provided for the specific conditions identified in the treatment plan. Treatment of other conditions remains subject to the terms of this Certificate.

On the same page, the certificate states:

BCBSM decides who is eligible for integrated case and disease management.

Information was provided by both parties that established that the Petitioner's only BCBSM treatment plan under ICDM provided for coverage for Pleurx Catheter Drainage Kits for the time period December 4, 2007 until January 24, 2008. No information was provided indicating any other treatment plan was created for the Petitioner. BCBSM did not approve any other noncontractual benefits other than the Pleurx Catheter Drainage Kits from December 4, 2007 until January 24, 2008. Because the items in question were not included in a treatment plan, BCBSM is not required to cover the Petitioner's catheter kits prior to December 2007 or to cover any of his portable oxygen services.

V ORDER

BCBSM's final adverse determination of July 10, 2008, is upheld. BCBSM is not required to cover the Petitioner's Pleurx Catheter Drainage Kits prior to December 2007 or any of his portable oxygen equipment provided under his Individual Care Blue coverage.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.